



STATE OF NEW JERSEY

Board of Public Utilities

*Two Gateway Center
Newark, NJ 07102*

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR)
AN ORDER AUTHORIZING ESSEX)
COMMUNICATIONS, INC. TO PROVIDE)
LOCAL EXCHANGE TELECOMMUNI-)
CATIONS SERVICES THROUGHOUT THE)
STATE OF NEW JERSEY)

ORDER OF APPROVAL

DOCKET NO. TE00030186

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated March 16, 2000, Essex Communications, Inc. (Petitioner or Essex) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange telecommunications service in the State of New Jersey. Petition at 1. Essex also does business as eLEC Communications and Telecarrier Services. Ibid. In addition, Petitioner provided responses to Staff's questionnaire and to Staff interrogatories in letters dated May 16, 2000, June 8, 2000 and June 16, 2000. Petitioner requested that its pro forma information as well as the other financial data included in its letters of June 8, 2000 and June 16, 2000 be accorded confidential treatment.

Essex is a wholly-owned subsidiary of eLEC Communications Corp. (eLEC), a New York corporation. Id. at 3. According to the petition, Petitioner was incorporated under the laws of the State of New York on December 8, 1997. Petition at 3, Exhibit A. Petitioner submitted copies of its Articles of Incorporation, New York Certificate of Good Standing and its New Jersey authority to operate as foreign corporation. Petition at 3, Exhibit B. Petitioner's corporate offices are located at eLEC Communications Corp., 509 Westport Avenue, Norwalk, Connecticut 06851. Ibid.

According to the petition, Essex was formed to provide local exchange services. Petition at 1. Petitioner advised that Essex is currently certified to provide local telecommunications services in Florida, Massachusetts, New Jersey (resale only), New York, Ohio, Virginia and Rhode Island. There are no outstanding complaints in New Jersey as a result of their resale activities. Petitioner is also authorized to provide interexchange services in Massachusetts and New York. Id. at 4 and May 16, 2000 letter at 4. Essex has not been denied authority to provide telecommunications services, in any state. In addition Essex has no pending civil, criminal or administrative actions against it. May 16, 2000 letter at 4.

In its petition and May 16, 2000 letter, Petitioner advised that it seeks authority to provide initially local exchange services to small and medium residential and business customers only throughout New Jersey. The scope and extent of these services will depend, at least in part, on the completion of interconnection agreements. By joint petition dated June 20, 2000, Bell

Atlantic-New Jersey, Inc. and Petitioner submitted a negotiated interconnection agreement for Board approval. See BPU Docket No. TO00060387

Petitioner requested waivers of rules requiring the keeping of books and records in New Jersey and the maintenance of these records according to the Uniform System of Accounts (USOA). Petitioner wishes to maintain its books and records at its corporate offices at eLEC Communications Corp., 509 Westport Avenue, Norwalk, Connecticut and to keep those books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petitioner maintained that keeping its books and records in New Jersey and according to USOA would be unduly burdensome. Petitioner has agreed to provide to the Board, in New Jersey, any books and records desired and reimburse the Board for the reasonable expenses accrued in viewing them. Id. at 5.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Id. at 6. Petitioner also asserted that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition will facilitate economic development in the State of New Jersey. Ibid.

With regard to its managerial and technical qualifications, Essex stated that it possesses the technical capability and managerial qualifications on its own and through the assistance of its parent to operate and manage its telecommunications operations in the State of New Jersey. Id. at 4. Petitioner submitted the biographies of its key personnel who, according to Petitioner, are well qualified to direct and manage its local exchange business in New Jersey. Ibid.

Petitioner stated that it has access to the financial capital necessary to conduct the telecommunications operations of the requested services as demonstrated by the form 10K of its parent and by the pro forma financial information submitted with its letter dated June 8, 2000. Petitioner asserted that this pro forma financial information contains extremely sensitive and strategic information that could be used by competitors to determine market share, revenue and other information damaging to Essex in the marketplace. Petitioner also stated that it has used its best efforts to keep and maintain such information confidential and due to the sensitive nature of this information has requested that Board maintain this information as proprietary information.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L., 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect or prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.(b)(1) and (3).

Therefore, having reviewed Essex's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange telecommunications services in New Jersey subject to approval of its tariff. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and all required financial statements have been provided. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief, from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemption from maintaining its books and records in New Jersey and under the USOA.

With regard to Petitioner's financial information submitted with Petitioner's letters of June 8, 2000 and June 16, 2000, the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1, that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that this financial information be kept under seal.

DATED: 8/22/00

BOARD OF PUBLIC UTILITIES
BY:

(signed)
HERBERT H. TATE
PRESIDENT

(signed)
CARMEN J. ARMENTI
COMMISSIONER

(signed)
FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)
FRANCES L. SMITH
SECRETARY

